

E. N. Bisso & Sons, Inc. and Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO. Case 15-CA-13088

September 13, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge and amended charge filed on February 14 and March 20, 1995, respectively, the General Counsel of the National Labor Relations Board issued an amended complaint and notice of hearing on April 4, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 15-RC-7817. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer to the amended complaint admitting in part and denying in part the allegations in the amended complaint, and requesting that the amended complaint be dismissed.

On August 21, 1995, the General Counsel filed a Motion for Summary Judgment. On August 23, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 5, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to conduct alleged to have affected the results of the election in the representation proceeding. In addition, in its response to the Notice to Show Cause, the Respondent contends that it is entitled to a hearing on the allegations in the amended complaint that it has refused to bargain with and to furnish information to the Union.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation pro-

ceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the amended complaint's allegations that the Respondent has refused to bargain and to furnish necessary and relevant information to the Union.¹ The Respondent's answer to the amended complaint admits all the material allegations in this regard. Thus, as there are no disputed issues with respect to the Respondent's refusal to bargain and to furnish information, a hearing on these allegations is clearly unwarranted.

Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in New Orleans, Louisiana, has been engaged in the business of ship docking. During the 12-month period ending February 28, 1995, the Respondent, in conducting its business operations, purchased and received at its facility goods valued in excess of \$50,000 directly from points located outside the State of Louisiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held February 22 and March 3, 1994, the Union was certified on February 17, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All deckhands, able-bodied deckhands, engineers, and oilers employed on all Employer owned and operated vessels, but excluding dispatchers, mechanics, clerical employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

¹ The Union requested the Respondent to provide it with a current list of bargaining unit employees and their addresses. Such information is presumptively relevant and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

² We therefore deny the Respondent's requests that the amended complaint be dismissed and that it be awarded litigation costs and attorney's fees.

B. *Refusal to Bargain*

About February 24 and March 9, 1995, the Union requested the Respondent to bargain with it as the exclusive bargaining representative of the unit. In addition, about February 6 and 23, 1995, the Union requested the Respondent to furnish it with a current list of bargaining unit employees and their addresses, which information is necessary and relevant to the Union's role as the exclusive bargaining representative of the unit. The Respondent, however, since about February 24, 1995, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit, and, since about February 10, 1995, has failed and refused to furnish the Union with the information requested. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union relevant and necessary information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, E. N. Bisso & Sons, Inc., New Orleans, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refus-

ing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All deckhands, able-bodied deckhands, engineers, and oilers employed on all Employer owned and operated vessels, but excluding dispatchers, mechanics, clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Furnish the Union with the information that it requested on February 6 and 23, 1995.

(c) Post at its facility in New Orleans, Louisiana, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 15 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is rel-

evant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All deckhands, able-bodied deckhands, engineers, and oilers employed on all our owned and operated vessels, but excluding dispatchers, mechanics, clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union with the information that it requested on February 6 and 23, 1995.

E. N. BISSO & SONS, INC.